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EXAMINER

GEHMAN, BRYON P

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 09/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/732,729	CLEVELAND ET AL.
	Examiner Bryon P. Gehman	Art Unit 3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/5/04
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

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1. The abstract of the disclosure is objected to because in lines 5, 6 and 10, reference is to a single gun, when initial reference is to "at least one gun". Correction is required. See MPEP § 608.01(b).

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-20 are rejected under 35 U.S.C. 112; second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 1, lines 2, 4, 6 and 11, "the gun" is inconsistent with "at least one gun" of line 1. See also claim 7, line 2, claim 14, lines 2, 5 and 7 and claim 20, lines 2 and 8. In lines 7-8 and 8, "the upper support member" lacks antecedent basis. See also claim 12, line 2, claim 14, lines 9-10 and claim 20, lines 5-6 and 6. In lines 8-9, "common longitudinal axis" is indefinite, as the structure of the base and member do not define a longitudinal direction to provide the direction of the axis. See also claim 14, line 10.

In claim 2, line 2, "the outer circumference" lacks antecedent basis for a circumference.

In claim 3, line 2, "the barrel" is indefinite, as "at least one gun" fails to distinguish one particular barrel. See also claim 15, line 2.

In claims 8 and 14, there is insufficient structure recited to render the scope of "rotatable" definite, as any movable structure is "rotatable" by sufficient force. In line 2,

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the location of "a support surface" is indefinite, as any surface of the Earth would be such a "support surface".

In claim 11, the claim is ungrammatical, as --at least one ...is circular-- is the proper grammar.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-2, 7-14 and 19-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Markle (492, 304). Disclosed is a device for storing at least one gun, the device comprising a base (5) having an upper surface including an outer contact portion (8) to contact the butt of a gun, an upper support section (6) including a receiving portion (9) for receiving the barrel of a gun, and an intermediate member (4) coupled between the base and the upper support section, wherein the base and upper support section have a common axis (through 4) wherein the distance between the outer contact portion and the axis is less than the distance between the receiving portion and the axis, allowing a gun to be positioned in a generally upright position.

As to claim 2, the receiving portion is defined in the outer circumference of the upper support section.

As to claim 7, the base includes at least one recess (8).

As to claims 8 and 14, the base and upper support section are both rotatable.

As to claim 9, the intermediate member (4) is oriented vertically.

As to claim 10, the axis is the axis of the intermediate member.

As to claims 11 and 12, the base and upper support section are each circular with the radius of the base being less than the radius of the upper support section.

As to claims 13 and 19, the outer case comprises an enclosure.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-2, 7-14 and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oakley et al. (4,099,808) in view of Markle. Oakley et al. disclose a device for storing at least one gun, the device comprising a base (54) having an upper surface including an outer contact portion (55) to contact the butt of a gun, an upper support section (56) including a receiving portion (57) for receiving the barrel of a gun, and an intermediate member (51) coupled between the base and the upper support section, wherein the base and upper support section have a common axis (through 51). Markle has been explained above and includes a relationship between the base and the upper support section wherein the distance between the outer contact portion and the axis is less than the distance between the receiving portion and the axis, allowing a gun

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to be positioned in a generally upright position. To modify the device of Oakley et al. employing the relationship between the base and the upper support section as that of Markle would have been obvious in order to stand guns upright, as taught by Markle.

As to claim 2, the receiving portion of both references is defined in the outer circumference of the upper support section.

As to claim 7, the base of both references includes at least one recess (8).

As to claims 8 and 14, the base and upper support section of both references are both rotatable.

As to claim 9, the intermediate member of both references is oriented vertically.

As to claim 10, the axis is the axis of the intermediate member.

As to claims 11 and 12, the base and upper support section are each circular with Markle disclosing the radius of the base being less than the radius of the upper support section.

As to claims 13 and 19, the outer case of both references comprises an enclosure.

8. Claims 3 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 2 and 14 above, and further in view of Law (4,796,762). Law discloses a fastening strap (85) for securing the barrel of a gun to a rack. To modify the upper support section of the previous combination employing a fastening strap as taught by Law would have been obvious in order to better secure the barrel to the support section, as suggested by Law.

9. Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 14 above, and further in view of Kimmel (3,927,923). Kimmel discloses a storage compartment (at 109). To modify the device of the prior art further employing the storage compartment teaching of Kimmel would have been obvious in order to store accessories to guns.

10. Claims 4-5 and 16-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 1 and 14 above, and further in view of Taylor (4,838,625). Taylor discloses an upper storage compartment (upper portion of Figure 1) provided with a plurality of drawers. To modify the device of the prior art further employing the upper storage compartment teaching of Taylor would have been obvious in order to store accessories to guns.

11. Claims 6 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over the art as applied to claims 5 and 17 above, and further in view of Richardson (5,613,614). Richardson discloses a bungee cord (13) with knobs (28) connected to a surface to secure items to the surface. To modify a surface of the upper storage compartment to include a bungee cord in the manner of Richardson would have been obvious in order to secure accessories to the surface, as suggested by Richardson.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bryon P. Gehman whose telephone number is (571) 272-4555. The examiner can normally be reached on Monday through Wednesday from 5:30am to 6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu, can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Bryon P. Gehman
Primary Examiner
Art Unit 3728

BPG